



**THE CITY OF NEW YORK  
LAW DEPARTMENT**

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**VIA ECF**

The Honorable Ann Donnelly  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: Raja v. Burns, et al. 19-cv-01328 (AMD) (RER)

Dear Judge Donnelly:

This office represents defendants John W. Burns, First Deputy Commissioner at the New York City Office of Administrative Trials and Hearings (“OATH”), and the City of New York (“City”) in the above-referenced action. I write to inform the Court that on July 19, 2019, the Second Circuit affirmed in part, and reversed in part, the judgment of the District Court in Nnebe v. Daus, 306 F. Supp. 3d 552, 558 (S.D.N.Y. 2018), which defendants cited in their Memorandum of Law in Support of Their Motion to Dismiss the First Amended Complaint [Dkt. No. 26] and their Reply Memorandum of Law in Further Support of Their Motion to Dismiss the First Amended Complaint [Dkt. No. 37]. See Nnebe v. Daus, 2019 U.S. App. LEXIS 21418 (2d Cir. July 19, 2019) (annexed hereto as Exhibit A).

Defendants cited the District Court’s decision with respect to its holding that even where due process rights were violated due to inadequate notice of a summary suspension, where there is no injury flowing from that suspension an award of \$1 in nominal damages to each plaintiff is appropriate. See Dkt. No. 26, pp. 15-16; Dkt. No. 37, p. 5. The Second Circuit did not disturb that holding. Indeed, the Second Circuit affirmed the District Court’s judgment “insofar as it found a notice violation” and specifically noted as follows: “While we express no view on the . . . damages issue[], we note that the deprivation of a hearing alone does not necessarily proximately cause a loss of income, since a hearing in a particular case may well have led to a continued suspension in any event.” Nnebe, 2019 U.S. App. LEXIS 21418 at p. 15, fn. 26 (citing Warren v. Pataki, 823 F. 3d 125, 143 (2d Cir. 2016)).

Accordingly, here, the Second Circuit's decision supports defendants' argument that because plaintiff ultimately agreed to the 35 day suspension he now challenges in the instant action (Dkt. No.21,Pl. SJ Mem., p l2), he has identified no viable injury from OATH's alleged wrongdoing.

Respectfully submitted,

/s  
Emily K. Stitelman

cc: Daniel L. Ackman Esq. (via ECF)